UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/39
6 January 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 11 (b) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING QUESTIONS OF: DISAPPEARANCES AND SUMMARY EXECUTIONS

Extrajudicial, summary or arbitrary executions

Report of the Special Rapporteur, Ms. Asma Jahangir, submitted pursuant to Commission on Human Rights resolution 1998/68

CONTENTS

	Paragraphs	Page
Introduction	1 - 3	4
I. THE MANDATE	4 - 7	4
A. Terms of reference	4 - 5	4
B. Violations of the right to life upon which the Special Rapporteur takes action	6	5
C. Legal framework and methods of work	7	6
II. ACTIVITIES	8 - 15	6
A. General remarks	8 - 10	6
B. Communications	11 - 15	7

GE.99-10019 (E)

CONTENTS (continued)

		Paragraphs	Page
III.	SITUATIONS INVOLVING VIOLATIONS OF THE RIGHT TO LIFE	16 - 33	8
	A. Capital punishment	16 - 17	8
	B. Death threats	18 - 19	9
	C. Deaths in custody	20 - 21	10
	D. Deaths due to excessive use of force by law enforcement officials	22 - 23	10
	E. Deaths due to attacks or killings by security forces, paramilitary groups or private forces cooperating with or tolerated by the State	24 - 26	11
	F. Violations of the right to life during armed conflicts	27	12
	G. Expulsion, refoulement or return of persons to a country or place where their lives are in danger	28	12
	H. Genocide	29 - 30	12
	I. Deaths due to acts of omission	31	13
	J. Impunity	32	13
	K. Rights of victims	33	13
IV.	ISSUES REQUIRING THE SPECIAL RAPPORTEUR'S ATTENTION	34 - 49	14
	A. Violations of the right to life of women	34 - 35	14
	B. Violations of the right to life of minors	36 - 38	14
	C. Violations of the right to life concerning refugees and internally displaced persons	39	15
	D. Violations of the right to life of individuals carrying out peaceful activities in defence of human rights and fundamental freedoms	40 - 42	15
	E. Violations of the right to life of persons exercising their right to freedom of opinion and expression	43 - 44	16

CONTENTS (continued)

		Paragraphs	Page
F.	The right to life and the administration of justice	45	16
G.	Violations of the right to life of persons belonging to national, ethnic, religious or linguistic minorities	46	16
H.	Violations of the right to life and non-State actors	47 - 48	17
I.	Violations of the right to life of individuals who have cooperated with representatives of United Nations human rights bodies (reprisals)	49	17
V.	ISSUES OF SPECIAL CONCERN TO THE SPECIAL RAPPORTEUR	50 - 77	18
A.	Capital punishment	50 - 64	18
B.	Impunity	65 - 70	22
C.	Child soldiers	71 - 73	24
D.	Traditional practices and customs affecting the right to life	74 - 75	25
E.	The right to life and sexual orientation	76 - 77	26
VI.	CONCLUDING REMARKS AND RECOMMENDATIONS	78 - 97	26

Introduction

1. This report is submitted pursuant to Commission on Human Rights resolution 1998/68 of 21 April 1998 entitled "Extrajudicial, summary or arbitrary executions". It is the first report submitted to the Commission by Ms. Asma Jahangir and the sixteenth submitted to the Commission since the mandate on "summary and arbitrary executions" was established by Economic and Social Council resolution 1982/35 of 7 May 1982. It will be recalled that Mr. Bacre Waly Ndiaye resigned from his duties as Special Rapporteur on extrajudicial, summary or arbitrary executions on 30 May 1998. By a letter of 12 August 1998 the Chairman of the Commission on Human Rights informed Ms. Jahangir of his decision to appoint her as Special Rapporteur on extrajudicial, summary or arbitrary executions. On 26 August 1998 Ms. Jahangir formally accepted her appointment by a letter to the Chairman.

2. For reasons of continuity the present report covers communications sent and received by both the previous and present Special Rapporteur in the period from 1 November 1997 to 31 October 1998. As a close reading of this document will reveal, the number of communications processed in the last year is considerably lower than in previous years. This is mainly due to the transition of the mandate from one Special Rapporteur to another, and should not be taken as an indication of any significant changes as regards the occurrence and seriousness of extrajudicial, summary or arbitrary executions. In an addendum to the present report, the Special Rapporteur describes 62 country situations, which include in summary form the information transmitted and received by the Special Rapporteur, including communications received from Governments, as well as the Special Rapporteur's observations where considered appropriate.

3. The Special Rapporteur wishes to emphasize that the present report is only approximately indicative of the occurrence of violations of the right to life worldwide. This is mainly due to the fact that the report is exclusively based on information brought to the Special Rapporteur's attention. The Special Rapporteur wishes to point out that the present report was drafted under strict deadlines only two months after her appointment, which has limited her opportunity to fully explore the mandate entrusted to her. As most of the material and events covered by this report refer to the period prior to her appointment, the Special Rapporteur has in the drafting of this report chosen to follow the outline and methods developed and applied by her predecessor. The Special Rapporteur would further like to take the opportunity of her first report to the Commission to discuss ways in which she hopes her mandate might be developed and to point to specific issues that she intends to focus on in the future, as they may represent emerging trends which, unless properly addressed, may become widespread or gain legitimacy through continued practice.

I. THE MANDATE

A. Terms of reference

4. In resolution 1998/68, the Commission on Human Rights requested the Special Rapporteur to continue to examine situations of extrajudicial, summary or arbitrary executions, to respond effectively to information which comes

before her and to enhance further her dialogue with Governments, as well as to follow up on recommendations made in reports after visits to particular countries. The Commission also requested the Special Rapporteur to continue monitoring the implementation of existing international standards on safeguards and restrictions relating to the imposition of capital punishment, bearing in mind the comments made by the Human Rights Committee in its interpretation of article 6 of the International Covenant on Civil and Political Rights, as well as the Second Optional Protocol thereto.

5. In its resolution, the Commission also requested the Special Rapporteur to apply a gender perspective in her work and to pay special attention to violations of the right to life of children, participants in demonstrations or other public manifestations, persons belonging to ethnic minorities, and individuals carrying out peaceful activities in defence of human rights and fundamental freedoms. The Commission further urged the Special Rapporteur to draw the attention of the United Nations High Commissioner for Human Rights to such situations of extrajudicial, summary or arbitrary executions that are of particularly serious concern to her or where early action might prevent further deterioration.

B. Violations of the right to life upon which the Special Rapporteur takes action

6. During the present reporting period, the Special Rapporteur acted in the following situations:

(a) Violations of the right to life in connection with the death penalty. The Special Rapporteur intervenes when capital punishment is imposed after an unfair trial or in the case of a breach of the right to appeal, or the right to seek pardon, or commutation of the sentence, and in cases where mandatory death sentences are imposed. The Special Rapporteur also undertakes action when capital punishment is imposed for crimes which cannot be considered "most serious crimes" as stipulated in article 6, paragraph 2, of the International Covenant on Civil and Political Rights. The Special Rapporteur may, moreover, intervene if the convicted person is a minor, mentally handicapped or ill, a pregnant woman, or a recent mother;

(b) Death threats and fear of imminent extrajudicial executions by State officials, paramilitary groups, private individuals, or groups cooperating with or tolerated by the Government, as well as by unidentified persons who may be linked to the categories mentioned above;

(c) Deaths in custody owing to torture, neglect, or the use of force, or life-threatening conditions of detention;

(d) Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality;

(e) Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State;

(f) Violations of the right to life during armed conflicts, especially of the civilian population and other non-combatants, contrary to international humanitarian law;

(g) Expulsion, refoulement, or return of persons to a country or a place where their lives are in danger, as well as the prevention of persons seeking asylum from leaving a country where their lives are in danger through the closure of national borders;

(h) Genocide;

(i) Deaths due to acts of omission on the part of the authorities, including mob killings. The Special Rapporteur may take action if the State fails to take positive measures of a preventive and protective nature necessary to ensure the right to life of any person under its jurisdiction;

(j) Breach of the obligation to investigate alleged violations of the right to life and to bring those responsible to justice;

(k) Breach of the additional obligation to provide adequate compensation to victims of violations of the right to life, and failure on the part of Governments to recognize compensation as an obligation.

C. Legal framework and methods of work

7. For an overview of the international legal standards by which the Special Rapporteur is guided in her work, she makes reference to the report of her predecessor to the Commission on Human Rights at its forty-ninth session (E/CN.4/1993/46, paras. 42-68). For the purposes of the present report, the Special Rapporteur has, as noted above, largely followed the methods of work developed and applied by the previous Special Rapporteur, Mr. Bacre Waly Ndiaye. These methods of work are described in Mr. Ndiaye's report to the Commission on Human Rights at its fiftieth session (E/CN.4/1994/7, paras. 13-67), as well as his subsequent reports to the Commission (E/CN.4/1995/61, paras. 9-11 and E/CN.4/1996/4, paras. 11-12).

II. ACTIVITIES

A. General remarks

8. Since her appointment in August 1998, the Special Rapporteur has held a number of consultations with the Office of the High Commissioner for Human Rights, both in Geneva and in New York. On these occasions she has had the opportunity to meet with staff of the OHCHR, and also to discuss issues of mutual interest with other special rapporteurs of the Commission on Human Rights. The Special Rapporteur considers cooperation with other United Nations human rights mechanisms to be of key importance to the implementation of her mandate, and looks forward to continuing the productive cooperation that has already been established with other thematic mechanisms and country-specific special rapporteurs, particularly with the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the question of torture, the Special Rapporteur on violence against women and the Special Rapporteur on the situation of human rights in Afghanistan.

She also intends to continue to develop her cooperation with the High Commissioner for Human Rights. The Special Rapporteur also looks forward to working together with United Nations field presences, particularly those set up by the Office of the High Commissioner for Human Rights.

9. The Special Rapporteur attaches great importance to her cooperation with non-governmental organizations engaged in human rights protection and monitoring, especially as regards issues falling within the scope of her mandate. In her new capacity as Special Rapporteur, she has already established contacts with a variety of such organizations, and looks forward to continuing this cooperation in the future. She will also try to support local non-governmental organizations by disseminating information about the functioning of United Nation human rights mechanisms. The media have also played a key role in keeping the world informed of and engaged in the efforts to fight human rights abuses, and the Special Rapporteur hopes for their continuing support in carrying out her mandate.

10. While the Special Rapporteur undertook no official visits in the period from the time of her appointment in August until the end of 1998, she has written to a number of Governments expressing her interest in visiting their countries. The Special Rapporteur believes that visits and field missions are indispensable for the implementation of her mandate, as they allow her to acquaint herself with specific country situations and to investigate not only the allegations brought to her attention, but put her in a better position to recommend remedial measures to help Governments in building their capacities for better governance. Information gathered on site will also greatly assist the Special Rapporteur in preparing accurate and objective reports on the situation in the countries concerned. The Special Rapporteur further hopes to visit countries where the authorities have managed to find constructive and sustainable solutions to problems falling within the scope of her mandate, and which in some instances could lend guidance to others still struggling with similar problems. She looks forward to continuing her dialogue with Governments in this regard.

B. Communications

11. The following paragraphs give an overview of communications sent to Governments in the course of the last year. The figures shown below represent only the tip of the iceberg, and should by no means be considered as indicative of the occurrence of extrajudicial, summary or arbitrary executions. Nor do these figures reflect the tragedy involved in each and every case, behind which there is the suffering and sorrow of family members which must eventually touch human society as a whole. The cries of agony, which need no language, continue to exist. We must respond to ensure them and ourselves that there is such a thing as an international conscience. No self-respecting Government can or does have peace itself where such misery and insecurity to human life surround its citizens.

12. During the period under review, the Special Rapporteur transmitted 63 urgent appeals to the Governments of the following 30 countries: Bahamas (2), Brazil (2), Colombia (9), Costa Rica (1), Democratic Republic of the Congo (3), Egypt (1), Guatemala (2), Indonesia (1), Iran (Islamic Republic of) (5), Iraq (2), Jamaica (1), Japan (1),

Kazakhstan (1), Mexico (1), Nigeria (2), Pakistan (1), Peru (3), Philippines (2), Rwanda (3), Sierra Leone (2), Singapore (1), Sri Lanka (1), Sudan (1), Tajikistan (1), Trinidad and Tobago (1), Turkey (1), Turkmenistan (2), United States of America (7), Venezuela (2) and Yugoslavia (1). She further sent one urgent appeal to the head of the Taliban Council. Among the urgent appeals sent by the Special Rapporteur, 10 were transmitted jointly with other experts of the Commission on Human Rights.

13. The urgent appeals sent concerned 158 individuals and the following groups of persons: prisoners in Abu Ghraib and Radwaniyah prisons in Baghdad, Iraq; inhabitants of Paratebueno in the municipality of Medina, department of Cundinamarca, Colombia; student demonstrators in Jakarta, Indonesia; displaced families in Rancho La Miel, department of Tolima, Colombia; civilians mainly belonging to the Hazara ethnic and religious minority in Mazar-I-Sharif, Afghanistan; inhabitants of Carmen de Atrato, department of Choco, Colombia; inhabitants of San José de Apartado, department of Antioquia, Colombia; human rights advocates in Colombia; members of La Oficina de Derechos Humanos del Arzobispado (the Archbishop's Office of Human Rights), Guatemala; members of the Defensoría Maya, Guatemala.

14. In addition, the Special Rapporteur transmitted allegations regarding the violation of the right to life of more than 2,300 individuals to the Governments of the following 40 countries: Algeria, Bahrain, Belgium, Bhutan, Brazil, Bulgaria, China, Colombia, Democratic Republic of the Congo, Ethiopia, France, Guatemala, Guyana, Honduras, India, Indonesia, Iraq, Israel, Japan, Liberia, Malaysia, Mexico, Morocco, Myanmar, Nepal, Nigeria, Pakistan, Panama, Peru, Philippines, Republic of Korea, Rwanda, Senegal, Spain, Sri Lanka, Sudan, Thailand, the United Kingdom of Great Britain and Northern Ireland, Venezuela and Yugoslavia. In addition, allegations of violations of the right to life were sent to the Palestinian Authority.

15. During the period under review, from 1 November 1997 to 31 October 1998, the Governments of the following countries provided a reply to communications addressed to them during 1998 or during previous years: Algeria, Armenia, Azerbaijan, Bahamas, Bahrain, Bhutan, Brazil, Bulgaria, China, Colombia, Ecuador, Egypt, Ethiopia, Germany, Guatemala, Indonesia, Iran (Islamic Republic of), Iraq, Japan, Mexico, Nepal, Panama, Paraguay, Peru, Philippines, Singapore, Spain, Sudan, Thailand, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela and Yugoslavia. The Special Rapporteur regrets that the Governments of Cambodia, Papua New Guinea and Yemen have not replied to any of the communications transmitted by the Special Rapporteur in the past four years, and that the Governments of the Democratic Republic of the Congo, Nepal and Pakistan did not provide replies to communications sent in the past three years. The Governments of Rwanda, Romania and Sri Lanka have not responded to communications for the last two years.

III. SITUATIONS INVOLVING VIOLATIONS OF THE RIGHT TO LIFE

A. Capital punishment

16. In its resolution 1998/68, the Commission on Human Rights requested the Special Rapporteur to continue monitoring the implementation of existing

international standards on safeguards and restrictions relating to the imposition of capital punishment, bearing in mind the comments made by the Human Rights Committee in its interpretation of article 6 of the International Covenant on Civil and Political Rights, as well as the Second Optional Protocol thereto.

17. In this context, the Special Rapporteur transmitted 36 urgent appeals on behalf of 84 identified persons as well as on behalf of groups of unidentified persons to the Governments of the following countries: Bahamas (2), Democratic Republic of the Congo (2), Egypt (1), Iran (Islamic Republic of) (8), Iraq (2), Japan (1), Nigeria (2), Pakistan (1), Philippines (1), Rwanda (3), Sierra Leone (2), Singapore (1), Sudan (1), Tajikistan (1), Trinidad and Tobago (1), Turkmenistan (1) and the United States (6). The Special Rapporteur transmitted allegations to the Government of Iraq concerning irregularities in the implementation of capital punishment concerning 62 identified persons and the execution of hundreds of prisoners in connection with a so-called "prison cleansing campaign" in November and December 1997. For a more detailed discussion regarding the issue of capital punishment, reference is made to chapter V, section A, of this report.

B. Death threats

18. The Special Rapporteur transmitted 20 urgent appeals aimed at preventing loss of life after she received reports on situations where the lives and physical integrity of persons were feared to be in danger. In this context urgent appeals were sent to the Governments of the following countries: Brazil (2), Colombia (8), Costa Rica (1), Guatemala (2), Peru (3), Philippines (1), Sri Lanka (1), Turkey (1) and Venezuela (1). These urgent appeals concerned 37 identified persons and groups of persons such as inhabitants of certain municipalities, witnesses, indigenous groups, persons belonging to certain families and members of opposition parties or human rights groups.

19. Persons on whose behalf the Special Rapporteur acted had received, directly or indirectly, death threats from State officials, paramilitary groups and private individuals cooperating with or tolerated by the State. Persons were said to have received death threats from State officials in Brazil, Colombia, Peru and Venezuela. Death threats were allegedly received from paramilitary groups in Colombia. Lastly, the Special Rapporteur addressed urgent appeals to the Governments of Colombia, Costa Rica, Guatemala, Peru, the Philippines and Sri Lanka on behalf of persons who had allegedly received death threats from private individuals cooperating with or tolerated by the authorities. The Special Rapporteur remains particularly concerned about the situation in Colombia where death threats against human rights activists, community activists and trade union leaders have become routine in recent years. The Special Rapporteur also notes with concern that she transmitted three urgent appeals to the Government of Peru, including one on behalf of a person who had cooperated with United Nations human rights bodies.

C. Deaths in custody

20. The Special Rapporteur transmitted allegations of the death in custody of 44 persons, of whom 40 were identified, to the Governments of the following countries: Algeria (1), Bahrain (3), Belgium (1), Bhutan (1), China (1), France (1), Guyana (1), India (4), Iraq (4), Israel (2), Japan (1), Liberia (4), Malaysia (1), Mexico (6), Morocco (1), Myanmar (1), Nigeria (2), Peru (1), Philippines (1), Republic of Korea (1), Sri Lanka (1), the United Kingdom of Great Britain and Northern Ireland (1) and Yugoslavia (4). One allegation was also sent to the Palestinian Authority. In addition, the Special Rapporteur transmitted two urgent appeals on behalf of detained persons whose lives were alleged to be in danger. The Special Rapporteur transmitted one urgent appeal to Turkmenistan on behalf of two persons who were reportedly sentenced to long prison terms after an anti-Government demonstration. Fears for their lives had been expressed, as they were reportedly suffering constant beatings in prison. The Special Rapporteur also sent an urgent appeal to Venezuela on behalf of a person who was reportedly being ill-treated and threatened with death while in incommunicado detention.

21. The Special Rapporteur is concerned about the situation in India, as she continues to receive numerous reports of persons who died while they were in the custody of the police and other State officials. She is also aware of a growing number of cases in the Federal Republic of Yugoslavia, in which detainees have died after having reportedly sustained serious injuries under police interrogation. Reports also indicate that harsh living conditions and ill-treatment continue to claim the lives of inmates in Venezuelan prisons. The Special Rapporteur notes that in most countries where deaths in custody occur, State authorities are too often slow or reluctant to investigate cases and to bring persons responsible for such abuses to justice. As noted in section J below, this situation has, in some countries, led to a climate of impunity. She is also deeply concerned at the reluctance on the part of most Governments to recognize their additional obligation to ensure compensation to the families or relatives of victims of such abuses.

D. Deaths due to excessive use of force by law enforcement officials

22. The Special Rapporteur transmitted allegations regarding violations of the right to life of 37 persons, of whom 29 were identified, to the Governments of the following countries: Bulgaria (1), Ethiopia (4), France (1), Guyana (1), Indonesia (2), Malaysia (9), Mexico (2), Morocco (1), Nepal (1), Panama (1), Philippines (10), Spain (1), the United Kingdom of Great Britain and Northern Ireland (1) and Venezuela (2). These allegations included two reported violations of the right to life as a consequence of excessive use of force against participants in demonstrations in Indonesia. The Special Rapporteur also transmitted urgent appeals to the Governments of Indonesia and Brazil with the aim of preventing deaths due to excessive use of force by law enforcement officials. The Special Rapporteur appealed to the Government of Indonesia when she was informed that at least five students had been shot dead during a demonstration in Jakarta on 12 May 1998. In view of the fact that more demonstrations were expected, the Special Rapporteur expressed her concern over the security of the participants.

23. The Special Rapporteur is particularly concerned about reports from the Philippines saying that eight prisoners died as a result of excessive use of force by the Philippine National Police in connection with prison riots. It is alleged that several of the prisoners were shot dead after they had been wounded and were lying on the floor. The Special Rapporteur also notes with concern reports that eight Indonesian nationals were killed when Malaysian police reportedly attempted to forcibly repatriate a large group of Indonesians who were being held in immigration detention camps. She has also received reports indicating that in Brazil during the last two years, the average number of deaths resulting from police action has doubled. This trend has been attributed to the failure of the State authorities to prosecute police officers who shoot or wound criminal suspects.

E. Deaths due to attacks or killings by security forces, paramilitary groups or private forces cooperating with or tolerated by the State

24. The Special Rapporteur transmitted allegations of killings by security forces, by paramilitary groups or by private forces to the Governments of Brazil (3), Colombia (98), Democratic Republic of the Congo (185), Ethiopia (8), Guatemala (2), Honduras (3), India (8), Indonesia (6), Iraq (1), Israel (3), Mexico (18), Myanmar (160), Pakistan (44), Peru (3), Philippines (4), Senegal (2), Sri Lanka (10), Sudan (129), Thailand (3) and Yugoslavia (78). The Special Rapporteur also transmitted allegations to the Government of Rwanda concerning the death of 1,123 persons, including many women and children, in massacres allegedly carried out by the Rwandese Patriotic Army.

25. The Special Rapporteur transmitted an appeal urging the head of the Taliban Council to ensure the physical integrity of the civilian population of Bamyan and other parts of Afghanistan under Taliban control. The appeal was sent following alleged massacres of civilians by Taliban forces in Mazar-I-Sharif in August 1998. An urgent appeal was also sent to the Government of the Federal Republic of Yugoslavia following the killing of 25 Kosovo Albanians in clashes with government forces in the Drenica region in February 1998. Additionally, the Special Rapporteur appealed to the Government of Mexico following the killing of 45 indigenous Tzotziles by paramilitary groups in the area of Acteal in the State of Chiapas in December 1997. She further transmitted allegations of deaths due to attacks by paramilitary groups to the Governments of Colombia, Mexico and Ethiopia and by private individuals cooperating with or tolerated by the State to the Governments of Brazil, Colombia, Guatemala, Honduras, Mexico and Pakistan.

26. The situation in the Great Lakes region of Africa remains a cause for deep concern for the Special Rapporteur. She is outraged by the continuing reports of massacres allegedly carried out by the Rwandese Patriotic Army and the growing number of civilians, including many Rwandan refugees, allegedly killed by the security forces of the Democratic Republic of the Congo. She is also alarmed by the situation in Myanmar where government security forces have allegedly continued summary killings of unarmed villagers, most often in the context of forced relocation or forced labour for the security forces. The Special Rapporteur remains extremely concerned about the situation in Colombia, where attacks conducted by members of the army and paramilitary

groups against those believed to cooperate with the guerrillas have allegedly led to the deaths of many innocent civilians. The crisis in the Kosovo province in the Federal Republic of Yugoslavia has claimed the lives of a large number of unarmed civilians, including many women and children. It should be noted that the allegations presented above represent a mere fraction of the actual number of civilians killed in Kosovo, and only reflect cases brought directly to the Special Rapporteur's attention. The Special Rapporteur is also deeply concerned about continuing reports of extrajudicial killings by police and security forces in Pakistan.

F. Violations of the right to life during armed conflicts

27. The Special Rapporteur remains extremely concerned about the growing number of civilians and persons hors de combat killed in situations of internal strife or armed conflict in all regions of the world. In the last year many thousands of persons not participating in armed confrontations have lost their lives as a result of deliberate killings, the use of indiscriminate or disproportionate force, the utilization of anti-personnel mines, or the blockage of goods and services, including relief assistance, in countries such as Afghanistan, Colombia, the Democratic Republic of the Congo, Myanmar, Sri Lanka, the Sudan and the Federal Republic of Yugoslavia.

G. Expulsion, refoulement or return of persons to a country or place where their lives are in danger

28. The Special Rapporteur transmitted one urgent appeal to the Government of Kazakhstan on behalf of three Uighur nationals from China who were reportedly in imminent danger of being extradited to China, where they allegedly could face torture and execution, as they were accused of "ethnic separatist" activities by the Chinese authorities.

H. Genocide

29. The Special Rapporteur is aware of the frequent and at times casual use of the term "genocide" in everyday political discourse, which risks eroding some of its weight as a legal term. This underscores the importance of using the term "genocide" with precision and in accordance with the criteria set out in article II of the Convention on the Prevention and Punishment of the Crime of Genocide. However, she notes with concern the reluctance on the part of the international community to use the term "genocide", even when the situations referred to constitute grave and systematic violations of the right to life which seem to match these criteria. The Special Rapporteur welcomes the decision to include the crime of genocide in the jurisdiction of the International Criminal Court, the Statute of which was adopted in Rome on 17 July 1998.

30. In this context, the Special Rapporteur wishes to note the report of the Secretary-General's Investigative Team charged with investigating serious violations of human rights and international law in the Democratic Republic of the Congo (S/1998/581, annex). In its report the Team presented the preliminary conclusion that "the systematic massacre of those [Rwandan Hutus] remaining in Zaire was an abhorrent crime against humanity, but the underlying rationale for the decisions is material to whether these killings constituted

genocide, that is to eliminate, in part, the Hutu ethnic group. The underlying reason for the massacres of Zairian Hutus in North Kivu is also material. This question is the most momentous one included in the mandate given to the Team, and one which requires further investigation." The Special Rapporteur regrets that, because of lack of cooperation on the part of the Government of the Democratic Republic of the Congo, the Team was unable to complete its investigations.

I. Deaths due to acts of omission

31. The Special Rapporteur transmitted an allegation to the Government of Sri Lanka concerning an incident reported to have occurred in the Katumara prison in December 1997, when 134 Tamil prisoners were allegedly attacked by armed Sinhalese prisoners. Three persons were reportedly killed and 17 others wounded in this attack which allegedly was carried out with the acquiescence or participation of prison guards and officials. The Special Rapporteur also submitted allegations to the Government of Algeria regarding the killing of 972 persons by armed groups in several locations close to Algiers. She is deeply disturbed by reports that in most of these incidents government forces, which were apparently stationed close to the scenes of the killings, failed to intervene despite calls for help. It is reported that in many cases the authorities have taken no action to investigate the killings or to arrest the perpetrators. One allegation was further submitted to the Government of the United Kingdom of Great Britain and Northern Ireland regarding a case in Northern Ireland in which it was alleged that a patrol of the Royal Ulster Constabulary, which was present at the scene, failed to intervene when a Catholic man was attacked by a group of loyalists. The man later died in hospital as a result of head injuries.

J. Impunity

32. The Special Rapporteur wishes to emphasize that Governments have an obligation to carry out exhaustive and impartial investigations into allegations of violations of the right to life, to identify, bring to justice and punish perpetrators, as well as to take effective measures to avoid the recurrence of such violations. However, the Special Rapporteur is deeply concerned that in most of the countries where violations of the right to life were committed, the authorities have failed in their duty to bring perpetrators to justice, which in some countries has led to a climate of impunity often leading to the perpetuation and encouragement of human rights violations, including extrajudicial, summary or arbitrary executions. For more detailed discussion concerning the problem of impunity, reference is made to chapter V, section B, of this report.

K. Rights of victims

33. The right of victims or their families to receive fair and adequate compensation within a reasonable period of time is a recognition of the State's responsibility for the acts committed by its personnel, as well as an expression of respect for the human being. Granting compensation presupposes compliance with the obligation to conduct investigations into allegations of violations of the right to life with a view to identifying and prosecuting the alleged perpetrators. The Special Rapporteur wishes to emphasize that the right of the victim is important not as an instrument of revenge, but in order to ensure respect for the rule of law.

IV. ISSUES REQUIRING THE SPECIAL RAPPORTEUR'S ATTENTION

A. Violations of the right to life of women

34. During the period under review, the Special Rapporteur took action on behalf of 123 women, of whom 106 were identified. The Special Rapporteur transmitted urgent appeals on behalf of 15 women to the Governments of Brazil, Colombia, Costa Rica, Guatemala, the Islamic Republic of Iran, Peru, Sierra Leone, the Sudan, Trinidad and Tobago and the United States. She also sent an appeal to the Government of Colombia on behalf of a number of displaced families. In addition, the Special Rapporteur transmitted allegations regarding 108 cases of violations of the right to life of women, including 12 minors, said to have occurred in Belgium (1), Colombia (11), the Democratic Republic of the Congo (3), Indonesia (2), Liberia (1), Myanmar (38), the Philippines (1), Rwanda (43) and Sri Lanka (8). Allegations of a more general nature regarding violations of the right to life of groups of unidentified persons, including many women, were also sent to the Governments of Algeria and the Federal Republic of Yugoslavia.

35. It should be noted that the figures mentioned above do not necessarily show the actual number of women on whose behalf the Special Rapporteur intervened. First, they reflect only those cases in which it was specifically indicated that the victim was female. Second, some allegations transmitted by the Special Rapporteur refer to groups of unidentified persons which likely included women. It is a fact that women and children are the main victims of armed conflict and civil unrest. Most of the women on whose behalf the Special Rapporteur took action were women who received death threats or who were killed in attacks or killings by security forces of the State or by paramilitary groups. The Special Rapporteur is alarmed by reports from Sri Lanka and Myanmar saying that several women had allegedly been gang-raped before being killed. The Special Rapporteur is also concerned about the large number of women killed in the conflict in Kosovo. Many women are also among growing numbers of people killed by armed groups in Algeria.

B. Violations of the right to life of minors

36. During the period under review, the Special Rapporteur took action on behalf of 67 minors, of whom 56 were identified. She transmitted urgent appeals on behalf of minors to the Governments of Colombia, Mexico and the United States of America. An appeal was also sent to the head of the Taliban Council. The urgent appeal transmitted to the United States concerned a person who was reportedly facing the death penalty in Texas for an act of murder he reportedly committed when he was 17 years of age. The urgent appeals sent to the Governments of Colombia and Mexico and the head of the Taliban Council concerned unspecified or unknown numbers of minors whose lives were feared to be threatened, either because of their link to an adult or in connection with indiscriminate violence by paramilitary forces.

37. The Special Rapporteur transmitted 64 alleged cases of violations of the right to life of minors to the Governments of: Colombia (5), Democratic Republic of the Congo (1), Ethiopia (1), France (1), Honduras (1), Israel (2), Mexico (2), Myanmar (7), Nigeria (1), Pakistan (3), Philippines (3), Rwanda (25), Sri Lanka (6), Thailand (3), Venezuela (2) and Yugoslavia (1).

These included children who had died as a result of an excessive use of force, as well as in attacks or killings committed by security forces or paramilitary groups. Allegations of killings of groups of unidentified persons, including several children, by armed gangs were also sent to the Government of Algeria.

38. In the last year large numbers of children have been killed in the context of armed conflict or internal strife in countries such as Algeria, the Democratic Republic of the Congo, Sri Lanka and the Federal Republic of Yugoslavia. The Special Rapporteur is also distressed that many children were reportedly among the victims of massacres in the Democratic Republic of the Congo, Myanmar and Rwanda.

C. Violations of the right to life concerning refugees and internally displaced persons

39. During the present reporting period, the Special Rapporteur sent both urgent appeals and allegations concerning individuals and groups of people who had been displaced, either as refugees or as internally displaced persons, and who had suffered violations or threats of violations of the right to life. The countries to which these communications were sent and the individuals on whose behalf they were transmitted include: 70 peasant families in Colombia who reported having received death threats from paramilitary groups; 54 Rwandese refugees in the Democratic Republic of the Congo, who were reportedly killed while attempting to return to their homeland; and 45 Karen-minority villagers who had been forcibly relocated in Myanmar.

D. Violations of the right to life of individuals carrying out peaceful activities in defence of human rights and fundamental freedoms

40. During the period under review, the Special Rapporteur transmitted urgent appeals on behalf of 14 persons carrying out peaceful activities in defence of human rights and fundamental freedoms, requesting the Governments concerned to take the necessary measures to protect these individuals' right to life. The action undertaken by the Special Rapporteur was on behalf of human rights defenders threatened in the following countries. Brazil (1), Colombia (2), Costa Rica (1), Guatemala (6), Peru (2), Philippines (1) and Turkey (1).

41. In addition, the Special Rapporteur transmitted allegations of violations of the right to life of 13 human rights defenders. The following human rights defenders were reportedly killed in Brazil: Fransisco de Assis Araujo, Onalicio Araujo Barror, Valentin Serra; Colombia: Jesús María Valle Jaramillo, Luis Alberto Lopera Munera, Rosmira Gallego; Democratic Republic of the Congo: Oswald Hakorinama; Ethiopia: Ato Assefa Maru; Guatemala: Monseñor Juan Gerardi; Honduras: Jorge Castillo, Julian Alberto Morales; Mexico: José Tila López García, Oscar Rivera Leyva.

42. The Special Rapporteur continues to be concerned at the large scale on which threats against and violations of the right to life of human rights defenders are occurring in various countries in the world. The Special Rapporteur is particularly appalled at the situations in Colombia and Guatemala, where human rights defenders seem to be one of the target groups

for extrajudicial, summary or arbitrary executions and where measures aimed at their protection seem ineffective. The Special Rapporteur has received reports indicating that in the period from 1 January to 30 November 1998, more than 40 individual human rights activists and a large number of human rights groups, mainly in Latin America, were either threatened with death or extrajudicially killed.

E. Violations of the right to life of persons exercising their right to freedom of opinion and expression

43. During the period under review, the Special Rapporteur took action on behalf of a wide variety of persons falling within this category, including journalists, members of political parties and trade unions, as well as participants in demonstrations. Allegations of violations of the right to life of 160 persons exercising their right to freedom of opinion and expression were transmitted to the Governments of the following countries: Bhutan (1), China (1), Colombia (5), Indonesia (3), Iraq (4), Mexico (1), Myanmar (1), Nepal (1), Pakistan (11), Panama (1), Senegal (1), Sudan (129) and Yugoslavia (1). The allegations sent to the Government of the Sudan concerned the alleged killing of 129 young men who had apparently been forcibly recruited to undergo military training. It is reported that officers gave the order to shoot at the recruits when they expressed, in a peaceful manner, resentment that their request for leave to celebrate a religious holiday had been turned down. It is alleged that 74 persons were shot dead and 55 others drowned when trying to escape in a boat that was shot at and then sank.

44. Moreover, the Special Rapporteur transmitted 8 urgent appeals on behalf of 12 persons exercising their right to freedom of opinion and expression to the Governments of: Indonesia (1), Iran (Islamic Republic of) (4), Pakistan (1), Sri Lanka (1) and Turkmenistan (1).

F. The right to life and the administration of justice

45. During the period under review the Special Rapporteur undertook action on behalf of 14 persons involved in or related to the administration of justice, including lawyers, plaintiffs and witnesses. She transmitted one allegation of a violation of the right to life to the Government of Guatemala, regarding the killing of a person who was to appear as a witness in a case against three police officers accused of murder. The Special Rapporteur also sent urgent appeals to the Governments of Colombia, Costa Rica, Guatemala, Peru, the Philippines and Venezuela with the aim of preventing the loss of life of persons related to the administration of justice.

G. Violations of the right to life of persons belonging to national, ethnic, religious or linguistic minorities

46. The Special Rapporteur acted on behalf of a variety of persons considered to belong to national, ethnic, religious and/or linguistic minorities in their countries. Both urgent appeals and individual allegations concerning violations of the right to life were transmitted to Governments during the period under review. This included communications sent to the following countries on behalf of the following persons: the Federal Republic

of Yugoslavia on behalf of 80 ethnic Albanians in the province of Kosovo; Sri Lanka concerning over 20 persons belonging to the Tamil minority; Iraq on behalf of four Shi'a Muslims; Nepal concerning the alleged death of a Tibetan monk; and China where one Tibetan monk was said to have died as a result of torture. In addition, communications were sent to Brazil on behalf of an indigenous activist from the Xucuru population; to Colombia regarding death threats received by four indigenous activists and for the alleged killings of two other indigenous activists; to the Democratic Republic of the Congo, concerning the reported deaths of 54 Rwandan refugees; to Guatemala, where four individuals working for the Mayan Defence of Guatemala reportedly received death threats; to Honduras, on behalf of two members of the Garifunas indigenous group; to Myanmar, regarding the reports of 168 deaths of people of Karen ethnicity; and to Indonesia concerning the death of an East Timorese woman and the situation facing the ethnic Chinese minority, which remains a matter of concern.

H. Violations of the right to life and non-State actors

47. The Special Rapporteur notes that violent acts committed by non-State actors do not fall within the purview of her mandate, which only allows her to take action when perpetrators are believed to have a link with the State. However, the Special Rapporteur is aware of and has received information concerning violence committed by armed opposition groups resorting to murder and indiscriminate or arbitrary killings of civilians as a tactic of armed struggle against Governments. She is aware that violent acts committed by such groups have led to the death of many civilians, in particular in Algeria, Colombia and Sri Lanka, as well as in the Kosovo province of the Federal Republic of Yugoslavia. The Special Rapporteur condemns these acts as clear violations of basic humanitarian and human rights principles.

48. While the Special Rapporteur recognizes the difficulties that the concerned Governments face in fighting armed insurgent groups, she notes with concern that in some countries Governments have adopted counter-insurgency strategies, often involving excessive and indiscriminate use of force, aimed at targeting those suspected of being members, collaborators or sympathizers of those groups, leading to further violations of the right to life. In this context, the Special Rapporteur wishes to refer to paragraph 1 of general comment 6 of the Human Rights Committee on article 6 of the International Covenant on Civil and Political Rights, in which the Committee confirmed that there can be no derogation from the right to life, not "even in time of public emergency which threatens the life of the nation". Governments engaged in action against armed groups must ensure that its own forces act in accordance with relevant international standards when carrying out their duties. Governments are also encouraged to devise strategies aimed at good governance through an efficient investigative process and to strengthen judicial capacity for long-term relief from rampant violence.

I. Violations of the right to life of individuals who have cooperated with representatives of United Nations human rights bodies (reprisals)

49. During the period under review, the Special Rapporteur sent one urgent appeal to the Government of Peru on behalf of a person who had cooperated with

representatives of United Nations human rights bodies. Heriberto Benítez Rivas, a human rights lawyer from Lima, reportedly received several death threats in the spring of 1998 in connection with his work as a human rights defender. Mr. Benítez had also given information to the United Nations regarding death threats received by a former member of the Constitutional Court in Peru.

V. ISSUES OF SPECIAL CONCERN TO THE SPECIAL RAPPORTEUR

A. Capital punishment

50. The Special Rapporteur shares and reiterates the view of her predecessor that capital punishment must be considered as an exception to the fundamental right to life and should as such be interpreted restrictively. In view of the fact that the loss of life is irreparable, it is also imperative that all restrictions and standards contained in pertinent international instruments are fully respected in proceedings relating to capital offences. The Special Rapporteur takes action in cases of capital punishment in which there is reason to believe that international restrictions, which are analysed in the paragraphs below, are not respected. In such cases, the carrying out of a death sentence may constitute a form of summary or arbitrary execution. Therefore, the Special Rapporteur has based her assessment of cases brought to her attention on the need to ensure full respect of the right to a fair trial, including guarantees as regards the impartiality, independence and competence of the judiciary. In addition, the Special Rapporteur has been guided in her work by the basic principles of the desirability of the abolition of capital punishment and the need to observe special restrictions and limitations in cases when the death penalty is applied.

1. Desirability of the abolition of the death penalty

51. The Special Rapporteur notes that while capital punishment has not yet been prohibited under international law, various United Nations human rights organs and bodies have, on several occasions, strongly reaffirmed the desirability of the abolition of the death penalty. During its fifty-third session the Commission on Human Rights took a major step in this direction with the adoption of resolution 1997/12 on 3 April 1997 on the question of the death penalty, in which the Commission for the first time called upon all States that had not yet abolished the death penalty to progressively restrict the number of offences for which the death penalty could be imposed. It further called on States to consider suspending executions, with a view to abolishing the death penalty. In the corresponding resolution 1998/8 adopted at its fifty-fourth session, the Commission called on States "to establish a moratorium on executions, with a view to completely abolishing the death penalty". In this context, the Special Rapporteur welcomes the fact that on 28 November 1998 the Bulgarian Parliament decided to abolish capital punishment. The last death sentence in Bulgaria was implemented in 1989. It may be noted that more than 100 countries have so far abolished the death penalty either by law or in practice.

52. The Special Rapporteur notes with appreciation that the Statute of the International Criminal Court, adopted in Rome on 17 July 1998, does not include capital punishment among the penalties that may be imposed by the

Court. It will be recalled that the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda established by the Security Council in 1993 and 1994, respectively, are not authorized to impose death sentences.

53. On a regional level, new members of the Council of Europe are required to sign within one year, and ratify within three years of joining the organization, Protocol No. 6 to the European Convention on Human Rights, aimed at abolishing the death penalty, and are also required to place an immediate moratorium on executions. However, the Special Rapporteur has received reports that in the Russian Federation hundreds of persons have been sentenced to death and an unknown number executed since the country joined the Council of Europe in 1996. She has been informed that the death penalty is to be abolished in the Russian Federation by February 1999, in accordance with the country's obligations as a member of the Council of Europe. The Special Rapporteur is also concerned about reports that Ukraine continued executing prisoners in 1997, despite the required moratorium. The Special Rapporteur notes with appreciation the decision of the House of Commons of the United Kingdom of 20 May 1998 to incorporate Protocol No. 6 into British Law. The Special Rapporteur also welcomes the decision of the General Affairs Council of the European Union of 29 June 1998 to adopt a policy aimed at promoting the abolition of the death penalty. In the declaration defining this policy entitled "Guidelines to European Union Policy Towards Third Countries on the Death Penalty", the European Union sets out as its objective to work towards universal abolition of the death penalty as a strongly held policy view agreed to by all its member States.

54. The Special Rapporteur notes with regret that despite the current trend supporting the abolition of the death penalty, some countries have resumed executions in the last year. She notes that in June 1998 Ethiopia carried out its first execution since 1991, and that two brothers were executed in Gaza in August 1998 after having been found guilty of murder. These were the first executions to be carried out by the Palestinian Authority. The Special Rapporteur has also been informed of two executions carried out in the Bahamas in 1998, which marked the end of a two-year period during which no executions took place in that country. It has further been brought to her attention that since the reintroduction of the death penalty in the Philippines in 1993, more than 820 persons have been sentenced to death.

2. Fair trial

55. Legal proceedings in relation to capital offences must conform to the highest standards of impartiality, competence, objectivity and independence of the judiciary, in accordance with the pertinent international legal instruments. It is, therefore, imperative that defendants facing the imposition of capital punishment are able to benefit fully from the right to a competent defence counsel at every stage of the proceedings. Defendants must also be presumed innocent until their guilt has been proved beyond a reasonable doubt. The Special Rapporteur shares the opinion expressed by her predecessor that the execution of a death sentence passed after a trial in which basic fair trial standards, as provided for in article 14 of the International Covenant on Civil and Political Rights, were not respected constitutes a violation of the right to life. During the present reporting

period the Bahamas, the Democratic Republic of the Congo, Egypt, the Islamic Republic of Iran, Iraq, Japan, Nigeria, Rwanda, Sierra Leone, Tajikistan, Trinidad and Tobago, Turkmenistan and the United States of America were among countries reported to have imposed death sentences after proceedings in which the defendants did not benefit fully from the rights and guarantees for a fair trial contained in the pertinent international instruments. The Special Rapporteur has also received reports from Afghanistan indicating that in many trials leading to the imposition of the death penalty, sitting judges lack sufficient training and that cases are often decided in a matter of minutes.

56. In cases where the defendants may face the death penalty, the proceedings must also respect and ensure the right of review of both the factual and legal aspects of the case by a higher instance, which should be composed of judges other than those who dealt with the case at first instance. Furthermore, there can be no exception to the defendant's right to seek pardon, clemency or commutation of the sentence. In this context, the Special Rapporteur regrets that on 23 October 1997 the Government of Jamaica notified the Secretary-General that it was withdrawing as a State party to the first Optional Protocol to the International Covenant on Civil and Political Rights, which allows individuals who claim that their rights under the Covenant have been violated to petition the Human Rights Committee. The Government's decision is of particular concern to the Special Rapporteur as it will withhold an important appeal option from persons facing a death sentence. It should be noted that when examining communications filed by persons sentenced to death in Jamaica, the Human Rights Committee found that in a considerable number of cases article 14, the right to a fair trial, had been violated. On 31 October 1997 the Special Rapporteur, Mr. Bacre Waly Ndiaye, raised these concerns in a letter to the Government of Jamaica.

57. The Special Rapporteur has received reports from Egypt indicating that since October 1992, military courts that do not allow for the right to appeal have passed 58 death sentences which were subsequently carried out. The Special Rapporteur also remains concerned about the situation in Rwanda, where it is alleged that courts conducting trials for the crime of genocide, which often led to the imposition of death sentences, continue to deny defendants their right to basic fair trial guarantees, particularly the right to legal representation and appeal. The extensive use of the death penalty in China continues to be a cause for great concern, as there are allegations of serious shortcomings in many of the trials leading to the passing of death sentences. It is reported that more than 3,100 persons were sentenced to death by Chinese courts in 1997. Some 1,800 people were reportedly executed in the same time period.

58. The Special Rapporteur is also aware of cases in which defendants who have been sentenced to death have decided to accept the imposition of the death penalty and not to appeal to a higher jurisdiction or to request clemency or pardon. In this regard, the Special Rapporteur shares the view expressed by the Economic and Social Council in its resolution 1989/64 of 24 May 1989 entitled "Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty", recommending that Member States introduce mandatory appeals or review with provisions for clemency or pardon in all cases of capital offence. During the period under

review, the Special Rapporteur transmitted urgent appeals on behalf of two persons who had chosen to withdraw their appeals in the United States of America.

59. Another cause for concern is the practice of establishing special tribunals and jurisdictions as a response to situations of internal conflict or other exceptional circumstances. Such tribunals are often set up with the intention of speedy trials, which often result in hastily imposed death sentences. There are reports of serious violations of fair trial standards in connection with proceedings before special tribunals, particularly as concerns the independence and impartiality of the judiciary, since the judges are often closely connected and at times directly accountable to the law enforcement authorities or the military.

60. The Special Rapporteur is also concerned over reports that most of the more than 60 foreigners currently under death sentence in the United States of America have been sentenced without being informed of their right under article 36 of the Vienna Convention on Consular Relations to receive legal assistance from their respective consulates. In this regard, the Special Rapporteur notes the case of Mr. Ángel Francisco Breard, a national of Paraguay, who was executed in Virginia despite a ruling by the International Court of Justice that the execution should be postponed pending full adjudication by the Court. It appears that Breard had not been informed of his rights under the Vienna Convention prior to his conviction. She further notes reports that 60 foreign nationals were among the more than 120 persons allegedly executed in Saudi Arabia in 1997, following trials that reportedly fell short of international standards.

3. Restrictions on the use of the death penalty

61. The Special Rapporteur is deeply disturbed that some countries still permit capital punishment for juvenile offenders, despite the fact that this practice is prohibited under international law. It may be noted that more than 100 of all 122 countries in which capital punishment is still legally in force have passed laws excluding death sentences for juveniles. During the present reporting period the Special Rapporteur transmitted urgent appeals to the Government of the United States of America on behalf of two persons sentenced to death for crimes they reportedly committed when they were 17 years old. The Special Rapporteur notes that since 1990, the Islamic Republic of Iran, Nigeria, Pakistan, Saudi Arabia, the United States and Yemen have executed persons who were reportedly under the age of 18 at the time when they committed the crime for which they received their death sentences. In the period 1985-1997, 19 juveniles were reportedly executed worldwide.

62. The Special Rapporteur wishes to point out that in resolution 1989/64 the Economic and Social Council recommended that States strengthen the protection of the rights of those facing the death penalty by eliminating the death penalty for persons suffering from mental handicap or extremely limited mental capacity. It should further be noted that the Safeguards guaranteeing protection of the rights of those facing the death penalty stipulate that the death penalty shall not be carried out on persons who have become insane. The Special Rapporteur strongly supports these recommendations and urges States to take action to reflect these restrictions in domestic law. In the period

under review, the Special Rapporteur took action on behalf of three persons who were sentenced to death in the United States of America, despite reportedly being mentally ill or handicapped. In this regard, the Special Rapporteur takes particular note of the case of Joseph John Cannon, a diagnosed schizophrenic, who was executed in Texas in April 1998 for a murder committed in 1977 when he was 17 years of age. The Special Rapporteur transmitted an urgent action on Mr. Cannon's behalf on 2 March 1998.

63. In regard to restrictions on the use of the death penalty, the Special Rapporteur finally wishes to recall article 6, paragraph 2, of the International Covenant on Civil and Political Rights which stipulates that, "in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes". In its general comment 4 on article 6, the Human Rights Committee stated that the expression "most serious crimes" must be read restrictively to mean that the death penalty should be a quite exceptional measure. The Special Rapporteur strongly supports this conclusion, and further believes that the death penalty should under no circumstances be mandatory by law, regardless of the charges involved. Furthermore, paragraph 1 of the Safeguards guaranteeing protection of the rights of those facing the death penalty states that the scope of crimes subject to the death penalty should not go beyond intentional crimes with lethal or other extremely grave consequences. The Special Rapporteur considers that these restrictions exclude the possibility of imposing death sentences for economic and other so-called victimless offences, or activities of a religious or political nature - including acts of treason, espionage and other vaguely defined acts usually described as "crimes against the State" or "disloyalty". Similarly, this principle would exclude actions primarily related to prevailing moral values, such as adultery and prostitution, as well as matters of sexual orientation.

64. The Special Rapporteur is particularly disturbed by reports that in August 1997 in the Islamic Republic of Iran, a 20-year-old woman was arrested and charged with engaging in sexual relations outside marriage. According to the information received, the woman was immediately sentenced to death by stoning. After she was stoned, medical doctors reportedly confirmed that she was dead. However, she apparently started breathing while being taken to the morgue, and was subsequently transferred to the hospital where her condition reportedly improved. In January 1997 the Special Rapporteur, Mr. Bacre Waly Ndiaye, sent an urgent appeal to the Government of Iran, following reports that the woman was about to be sentenced to a second stoning.

B. Impunity

69. The Special Rapporteur wishes to recall that the Human Rights Committee has in its general comment on article 6 of the International Covenant on Civil and Political Rights, as well as in numerous decisions, asserted that States are required to investigate all human rights violations, particularly those affecting the physical integrity of the victim, to bring to justice those responsible for such abuses, to pay adequate compensation to the victims or their families and to prevent the recurrence of such violations. The duty to investigate human rights abuses has been further reiterated and confirmed in a number of international instruments, including the Declaration on the Protection of All Persons from Enforced Disappearance and the Principles on the Effective Prevention of and Investigations of Extra-legal, Arbitrary and Summary Executions.

66. The Special Rapporteur notes that one of the key criteria of a functioning State is a justice system which is ready and capable of protecting the rights and integrity of the individual, inter alia by sanctioning the commission of crimes. Impunity for persons responsible for sanctionable acts, and in particular grave violations of human rights, undermines the rule of law, which is one of the most fundamental principles upon which society is based. Impunity also leads to the perpetuation of human rights violations, as offenders continue their practices and new abuses are ignored or covered up.

67. In some cases situations of impunity are a direct product of laws or other regulations which explicitly exempt public officials or certain categories of State agents from accountability or prosecution. This situation is particularly common in countries facing internal unrest or other exceptional circumstances, and where the authorities, particularly the police or security forces, are given wide-reaching powers to counter a real or perceived threat to national security. Broadly defined and vaguely worded amnesty laws, usually passed in the name of national reconciliation, may in some circumstances also lead to impunity for past abuses committed under the authority of a previous Government. In most cases, however, impunity is the product of a weak and inadequate legal system, which is unable or unwilling to take appropriate action to investigate and prosecute cases of human rights abuses, including violations of the right to life. In some countries the judiciary is strongly influenced by or directly accountable to the executive authorities, while in others, court decisions and orders are overruled or simply ignored by the law enforcement authorities. The Special Rapporteur is also increasingly concerned about the practice of prosecuting members of security forces in military courts, which often fall short of international standards regarding the impartiality, independence, and competence of the judiciary. Internal commissions of inquiry established to investigate abuses committed by law enforcement officials also often fail to meet these criteria.

68. During the period under review, the Special Rapporteur continued to receive information relating to impunity. She is particularly disturbed by the growing number of reports of killings by government security forces in Myanmar. The Special Rapporteur is not aware of any attempt by the Government of Myanmar to bring an end to these abuses, nor is there any indication that the Government intends to investigate the crimes committed in order to bring the perpetrators to justice. The Special Rapporteur is also alarmed by the obvious impunity with which paramilitary forces in Colombia have continued to commit systematic human rights violations, including violations of the right to life. Another cause for great concern is the continuing violence in the Great Lakes region, particularly in the Democratic Republic of the Congo and Rwanda, where Government-controlled forces, acting in a climate of apparent impunity and lawlessness, have reportedly committed large-scale atrocities, including massacres of civilians.

69. The Special Rapporteur welcomes the fact that after several years of preparation, the Statute for a Permanent International Criminal Court was finally adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court in Rome on 17 July 1998. The Court, which is to be established once the Statute is ratified by 60 States, will have jurisdiction over serious crimes of international concern, including genocide, war crimes, terrorism and crimes

against humanity. Under the principle of complementarity, the Court is to exercise its jurisdiction only in cases when national justice systems are unable or unwilling to do so. The Special Rapporteur is hopeful that the International Criminal Court, once it is established, will assume a key role in curbing the current trend of impunity by bringing perpetrators of gross human rights violations to justice.

70. In this context, the Special Rapporteur notes the discussion in the United Kingdom in late 1998 to allow extradition proceedings against former Chilean President Augusto Pinochet. It must be recognized that no one is above the law insofar as human lives are concerned. Strict concepts of impunity are now under challenge. However, the Special Rapporteur wishes to point out that measures taken to combat impunity by bringing perpetrators to justice cannot be selective, in order to have a meaningful impact on the responsibility of the State and its rulers to respect human life. Impunity for rulers suspected of killings is an offence to society as a whole. However, the objective of bringing officials and rulers within the ambit of ordinary law in this regard is not simply to give satisfaction to the family of the victims or to seek revenge for past atrocities, but to promote peace and respect for the law. It will be a major contribution towards ensuring a more responsible leadership.

C. Child soldiers

71. The Special Rapporteur notes with deep concern that there are today an estimated 250,000 children under the age of 18 serving in government forces or armed groups in various parts of the world. Some of these children are reportedly no more than eight years old. Under current international human rights and humanitarian law standards the age-limit for recruitment for military service is set at 15 years. It may be recalled that article 1 of the Convention on the Rights of the Child stipulates that "[F]or the purposes of the present Convention, a child means a person below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier". The only exception to this principle under the Convention is in relation to recruitment to armed forces and participation in hostilities (art. 38). This provision would seem to run counter to a growing legal consensus that a child under the age of 18 is entitled to special protection of its rights. A logical conclusion following from this principle would be that children need and should be afforded more, and not less, protection in times when their lives and security are threatened by armed hostilities.

72. The Special Rapporteur further notes that the majority of countries have set 18 years as the age when persons obtain the right to participate in political life including the right to vote. It is questionable whether young persons under the age of 18, who are not entitled to vote, can be required to take part in conflicts which are often the consequence of political decisions over which they have no influence. The Special Rapporteur further notes that the Human Rights Committee, in paragraph 13 of its general comment 21 on article 10 of the International Covenant on Civil and Political Rights, has recommended that the age for majority, when it comes to matters of criminal responsibility, should be 18 years.

73. While many of the juveniles participating in armed conflict are often presented as "volunteers", reports indicate a large number of these persons have actually been forcibly recruited. Even when the decision to enlist appears to have been based on free will, it should be noted that young persons, who have not reached the age of majority, cannot be expected to fully appreciate the implications of their decisions and actions or the dangers they may face. Since children lack maturity they are also more likely to act in an irresponsible way, which in the context of armed hostilities may result in arbitrary actions, including violations of the right to life. In view of these considerations and the legal arguments presented above, the Special Rapporteur concludes that the use of children in armed conflict constitutes a serious and direct threat to the protection and enjoyment of the right to life.

D. Traditional practices and customs affecting the right to life

74. The Special Rapporteur's attention has been drawn to certain traditional practices which, when condoned or ignored by the authorities, may constitute violations of the right to life. She is deeply disturbed by reports of so-called "honour killings" reported to take place in some countries in the Middle East, Latin America and South Asia, where husbands, fathers or brothers have gone unpunished after having murdered their wives, daughters or sisters in order to defend the honour of the family. She has also received accounts of such cases reported to have occurred in Turkey. This practice is usually resorted to when a woman is believed to have engaged in a sexual relationship with a man. In other cases women have reportedly been killed by their husbands after having demanded a divorce. The "honour killing" is usually a decision by an improvised tribunal consisting of male family members, and is as a general rule carried out by an under-age male relative of the woman. Such offenders are given special consideration of mitigation on the plea of cultural sensitivity. The Special Rapporteur has been informed that men who commit "honour killings" normally receive considerably shorter sentences, as the courts view defence of the honour of the family as a mitigating circumstance. It is also alleged that the police often fail to intervene to stop "honour killings" they are made aware of. The Special Rapporteur has received reports that in 1997 in Jordan more than 20 women were murdered by male relatives claiming to have acted in defence of their family's honour. She has also been informed that the Jordanian Penal Code includes several articles providing for reduced penalties for men who kill their wives or female relatives because of adulterous relationships. It further appears that in these cases Jordanian courts often pass reduced sentences ranging from two years to six months of imprisonment.

75. The Special Rapporteur urges States, and in particular members of the judiciary in the countries concerned, to use all their authority and integrity to bring this unacceptable practice to an end. With regard to the situation in Jordan, the Special Rapporteur is encouraged to note that in recent times members of the Royal Family have taken a personal interest in addressing the country's problem of violence against women, including the practice of "honour killings".

E. The right to life and sexual orientation

76. The Special Rapporteur is deeply concerned by numerous and continuing reports of persons having been killed or sentenced to death because of their sexual orientation. She is particularly disturbed by reports from Brazil, Colombia and Mexico, where so-called "death-squads" have over the last years reportedly murdered a large of number of persons belonging to sexual minorities. The Special Rapporteur has been informed that in the period from 1991 to 1994, 12 homosexual men were killed by armed groups in the city of Tuxtla Gutiérrez, Mexico. It appears that the perpetrators of these killings were never identified, and it is alleged that the authorities failed to carry out thorough and complete investigations into these crimes. The Special Rapporteur has also received reports that in the last several years hundreds of so-called "social undesirables", including many homosexuals and transvestites, have been killed by armed groups in Colombia. In Brazil it is reported that hundreds of persons belonging to sexual minorities have been murdered in the last 10 years. It is alleged that the Brazilian and Colombian authorities have not taken adequate action to find and prosecute the persons responsible for these crimes.

77. The Special Rapporteur regrets that in some States homosexual relationships are still punishable by death. In this regard she wishes to recall that under article 6 of the International Covenant on Civil and Political Rights, death sentences may only be imposed for the most serious crimes. As discussed above in chapter V, section A (3), this restriction clearly excludes matters of sexual orientation. The Special Rapporteur further believes that criminalizing matters of sexual orientation increases the social stigmatization of members of sexual minorities, which in turn makes them more vulnerable to violence and human rights abuses, including violations of the right to life. Because of this stigmatization, violent acts directed against persons belonging to sexual minorities are also more likely to be committed in a climate of impunity.

VI. CONCLUDING REMARKS AND RECOMMENDATIONS

78. The observations and discussion presented above bear testimony to the scope and seriousness of the problem of extrajudicial, summary or arbitrary executions, and confirm the need for the international community to renew its efforts to combat these atrocities. In light of the information brought to her attention during the period under review, the Special Rapporteur concludes that there is no indication of a decrease in violations of the right to life. She notes that while certain persons, such as human rights defenders, political activists, displaced persons and members of various minorities, continue to be particularly exposed to violations of the right to life, these abuses are by no means exclusively limited to these groups. In the last year there have been increasing reports of killings perpetrated by Government-controlled security forces and paramilitary units. Many of the victims of these horrendous acts have been women, children and elderly persons. The growing number of innocent civilians killed in the context of armed conflict and internal strife is also a cause for deep concern.

79. The Special Rapporteur wishes to stress that ending violations of the right to life is ultimately a question of Governments' genuine will and

readiness to honour their obligation to protect and promote the rights of the people living under their jurisdictions. Without basic respect for the rule of law, all declarations and commitments made by Governments lose their meaning, and the texts of the international instruments become empty words.

80. The Special Rapporteur is honoured to be entrusted with this challenging mandate, and she wishes to take this opportunity to thank her predecessor, Mr. Bacre Waly Ndiaye, for his hard and invaluable work in developing the mandate into a strong and credible mechanism for the protection of perhaps the most fundamental of all rights, the right to life. She recognizes the daunting tasks ahead, which she will endeavour to carry out with objectivity, diligence and commitment. At the same time, however, the Special Rapporteur fears that the limited resources placed at her disposal will hamper her efforts to discharge her mandate in an effective way. She is particularly concerned that shortage of staff and the absence of a proper database system may severely limit her possibilities for proper follow-up of cases brought to her attention. The Special Rapporteur also wishes to stress that she will only be successful in carrying out her mandate if Governments show willingness to cooperate and support her work in a spirit of openness and good faith. She further believes that her mandate can only be useful as a human rights mechanism if it manages to let the voices of the victims and their families be heard, and convince Governments of their responsibility to take joint action in order to bring these abuses to an end.

Recommendations

1. Capital punishment

81. The Special Rapporteur strongly recommends that States that have not ratified the International Covenant on Civil and Political Rights and, in particular, its Second Optional Protocol, should do so. All States should bring domestic legislation regarding the use of capital punishment in line with international standards. States that enforce their capital punishment legislation should observe all fair trial standards contained in the relevant international legal instruments, in particular the International Covenant on Civil and Political Rights.

82. Governments of countries in which the death penalty is still enforced are urged to deploy every effort to restrict its use, and to take measures aiming at the complete abolishment of capital punishment both in law and practice. As one of these measures, Governments should establish a moratorium on the execution of death sentences, in accordance with Commission on Human Rights resolution 1998/8. Pending the imposition of such a moratorium, Governments that continue to enforce death penalties are urged to take immediate steps to bring their domestic legislation and legal practice into line with international standards prohibiting the imposition of death sentences in regard to minors and mentally ill or handicapped persons. Governments are further called upon to review their existing legislation and legal practice with the aim of limiting the use of the death penalty to exclude crimes that cannot be considered "most serious", as provided in article 6 of the International Covenant on Civil and Political Rights. Death sentences should under no circumstances be mandatory.

83. Governments of countries which still retain laws providing for the death penalty, but which exercise a de facto moratorium on the passing of death sentences or the implementation of such sentences, are called upon to take the necessary steps to remove capital punishment from their legislation, particularly where it applies to children.

2. Death threats

84. Governments are under an obligation to ensure the protection of the human rights of all persons under their jurisdiction. This includes the duty to investigate all instances of death threats or attempts against lives that are brought to their attention, regardless of the race, ethnicity, religious belief, political persuasion or other distinction of the potential victim. Governments must also take effective preventive measures to ensure full protection of those who are particularly exposed and vulnerable to extrajudicial, summary or arbitrary execution. Governments should also consistently and in the strongest possible terms publicly denounce death threats, and adopt and publicly support policies aimed at promoting a climate of tolerance.

3. Deaths in custody

85. The Special Rapporteur is deeply concerned over continuing reports of deaths in custody. She wishes to emphasize the need for all States to review legislation and practices regarding arrest and conditions of detention in order to bring them into line with the Standard Minimum Rules for the Treatment of Prisoners and other pertinent international instruments. Governments should also take immediate steps to ensure that international norms and principles prohibiting any form of cruel, inhuman or degrading treatment are strictly applied in all places of detention.

86. The Special Rapporteur notes that most cases of custodial death occur in the period between a person's arrests and his or her arraignment. She therefore calls on Governments to deploy efforts to minimize the time of pre-trial detention prescribed by law, and to ensure that standards pertaining to the treatment of persons in pre-trial custody are observed. Prison guards and law enforcement personnel should receive training on the observence of the aforementioned norms in performing their duties. All deaths in custody should be promptly investigated by a body that is independent from the police or prison authorities. State authorities should guarantee the right of persons in detention to receive visits by their lawyers and family, and to have access to adequate medical care. When applicable, Governments should also continue and strengthen their cooperation with the International Committee of the Red Cross and allow free and unimpeded access of its delegates to places of detention. In addition, she requests the Commission on Human Rights to call for the rapid adoption of an optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment with a view to establishing a system of periodic visits to places of detention.

4. Excessive use of force by law enforcement officials

87. The Special Rapporteur calls on all Governments to ensure that their police and security personnel receive thorough human rights training, in

particular with regard to restrictions on the use of force and firearms in the discharge of their duties. Such training should also include the teaching of methods of crowd control without resorting to lethal force. States are under an obligation to ensure that all cases of excessive use of force by State agents are thoroughly investigated, and that the persons responsible for such abuses are brought to justice.

5. Violations of the right to life during armed conflict

88. States that have not yet ratified the four Geneva Conventions of 1949 and their two Additional Protocols are strongly encouraged to do so. Governments should ensure that members of their military and security forces receive adequate training in the human rights and humanitarian law standards applicable to situations of armed conflict and internal strife. Officers and other persons in positions of command should maintain strict discipline in their respective units, and take prompt action to prevent human rights abuses by their subordinates. Violations of humanitarian and human rights law standards by members of the armed forces should be promptly and consistently sanctioned.

89. Governments of countries engaged in action against armed opposition groups should take the necessary steps to ensure that counter-insurgency operations are conducted in strict compliance with international human rights standards, and that government forces do not resort to excessive or indiscriminate use of force. Non-State actors engaged in armed conflict should undertake to respect basic humanitarian principles, particularly those defined in common article 3 of the Geneva Conventions. Members of such forces should be held legally accountable for their acts. Governments that control armed groups operating outside their own territory should take full responsibility for human rights violations, including extrajudicial, summary or arbitrary executions, committed by these forces.

6. Imminent expulsion of persons to countries where their lives are in danger

90. The Special Rapporteur calls upon Governments that have not yet ratified the Convention and the Protocol relating to the Status of Refugees to do so. All Governments should at all times refrain from expelling a person in circumstances where respect for his or her right to life is not fully guaranteed. Refoulement of refugees or of internally displaced persons to countries or areas where respect for their right to life is not fully guaranteed, as well as the closure of borders preventing the escape of persons trying to flee a country, should at all times be prohibited. Whenever a country is faced with a massive influx of refugees the international community should provide necessary assistance to enable the host country to receive these persons in safety and dignity.

7. Genocide

91. Governments are encouraged to ratify the Convention on the Prevention and Punishment of the Crime of Genocide. The Special Rapporteur calls on States to pay due attention to the stipulations in the Convention concerning the prevention of genocide. Concerned States, assisted by the international

community, should take all necessary measures to prevent acts of communal violence or inter-ethnic conflict from degenerating into large-scale killings that may reach the dimension of genocide. States in which acts of communal violence occur should do their utmost to curb such conflicts at an early stage, and to work towards reconciliation and peaceful coexistence of all segments of the population, regardless of ethnic origin, religion, language or any other distinction. If required, the international community should assist these countries in preventing and defusing such conflicts. Governments should at all times refrain from spreading or condoning any propaganda or incitement to hatred and intolerance that might foment acts of communal violence. Persons responsible for such acts should be brought to justice.

92. The Special Rapporteur encourages the States parties to the Convention on the Prevention and Punishment of the Crime of Genocide to consider ways of establishing a monitoring mechanism to supervise the implementation of the Convention. She urges the international community and all concerned States to cooperate fully with the International Criminal Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda, particularly by arresting and handing over suspects, so as to bring to justice as soon as possible those accused of the crime of genocide. She also welcomes the adoption of the Statute of the International Criminal Court, and notes with appreciation that the Court will have jurisdiction over the crime of genocide. She is hopeful that the Court will be active in combating impunity for persons responsible for acts of genocide, and thereby contribute to the eradication of this horrendous crime.

8. Acts of omission

93. The Special Rapporteur urges Governments to adopt the necessary preventive and protective measures to ensure full enjoyment and protection of the right to life of all persons under their jurisdiction. Such measures may include requests for international assistance, should the Governments concerned feel unable to fulfil this obligation themselves. Governments are obliged to fight impunity for all crimes and to bring to justice persons committing murder in the context of mob violence or in the name of so-called popular justice. Governments should at no time allow acts of incitement to revenge that might lead to violations of the right to life. Governments should under no circumstances harbour and support groups or persons engaged in acts of terrorism. State officials who fail to take appropriate action to prevent violations of the right to life should be prosecuted.

9. Impunity

94. States are obliged to conduct exhaustive and impartial investigations into allegations of violations of the right to life, in all its manifestations, and to identify and prosecute those responsible. In addition to combating impunity by addressing past or ongoing abuses, States should take positive measures aimed at preventing the recurrence of such violations.

95. In this regard, the Special Rapporteur believes that the following measures should be introduced: (a) Governments that have not done so should establish strict procedures, such as habeas corpus, aimed at ensuring the integrity of persons under any form of detention; (b) State authorities should

ensure that strict discipline and a clear chain of command is maintained within the police and armed forces. All paramilitary or security forces not directly and strictly under government control should be immediately disbanded; (c) Governments should consider the establishment of independent human rights redress mechanisms, such as the Ombudsman institution, with the authority to take action on behalf of victims of human rights abuses. Such mechanisms would also serve to increase the transparency of State institutions and the accountability of public officials; (d) Governments should take effective action to strengthen the integrity, status and resources of the judiciary; (e) in accordance with principle 19 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, blanket amnesty laws prohibiting the prosecution of alleged perpetrators and violating the rights of victims should not be endorsed; (f) no person, regardless of his or her present or past status, function and position, should be immune from prosecution for gross human rights violations, including extrajudicial, summary or arbitrary executions. The Special Rapporteur further believes that a free and independent press can contribute to curbing impunity by giving publicity to human rights abuses and scrutinizing the work of the State authorities.

96. The Special Rapporteur welcomes the adoption of the Statute of the International Criminal Court and believes that the Court will provide an important complement to national legal systems that are unable or unwilling to combat impunity by exercising their own jurisdiction. In this context, the Special Rapporteur strongly recommends that States expedite the establishment of the International Criminal Court by securing the necessary ratifications of the Statute adopted by the United Nations Diplomatic Conference in July 1998.

10. Child soldiers

97. The Special Rapporteur deeply regrets the continuing practice of engaging children under the age of 18 in armed conflict. She strongly supports the adoption of an optional protocol to the Convention on the Rights of the Child aimed at prohibiting the recruitment of children under 18 years of age into the armed forces and armed groups and their participation in armed conflict. She further urg s States to take immediate unilateral action to raise the age of enlistment to 18 years.